

\*\*E-Filed 12/06/2010\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

## SAN FRANCISCO TECHNOLOGY, INC.,

**Plaintiff,**

V.

AERO PRODUCTS INTERNATIONAL INC., et al.,

### Defendants.

Case Number 5:10-cv-02994 JF/PVT

**ORDER<sup>1</sup> GRANTING MOTION FOR  
CERTIFICATION AND LEAVE TO  
INTERVENE**

On July 8, 2010, Plaintiff San Francisco Technology, Inc. filed the instant action alleging that Defendants have violated the False Marking Statute, 35 U.S.C. § 292. Subsection 292(b) of the statute authorizes a private individual to file *qui tam* civil action with damages to be shared equally by the plaintiff and the United States. At least three Defendants moved to dismiss, arguing in part that the statute violates the Appointments and Take Care Clauses of Article II of the United States Constitution.<sup>2</sup>

<sup>1</sup> This disposition is not designated for publication in the official reports.

<sup>2</sup> See September 8, 2010 Motion to Dismiss filed by Mead Westvaco. Dkt. 187 at 9:2-14:10; September 9, 2010 Motion to Dismiss filed by Woodstream Corp. Dkt. 199 at 10:3-13:10; September 16, 2010 Motion to Dismiss filed by Schick Manufacturing Inc. Dkt. 236 at 9:2-11:2.

In accordance with Fed. R. Civ. P. 5.1(b), the United States seeks an order certifying that a constitutional question has been raised as to the False Marking Statute and permission to intervene in defense of the statute pursuant to Fed. R. Civ. P. 5.1(c).<sup>3</sup> Plaintiff has filed a statement of non-opposition,<sup>4</sup> and Defendants have not filed opposition within the time permitted by the local rules.

## ORDER

7 Given that the instant motion is unopposed, the Court finds that it is suitable for  
8 determination without oral argument pursuant to Civil L. R. 7-1(b). Good cause therefor  
9 appearing, IT IS HEREBY ORDERED that the motion for certification and leave to intervene is  
10 GRANTED.

12 || DATED: December 6, 2010

JEREMY FOGEL  
United States District Judge

<sup>3</sup> Fed. R. Civ. P. 5.1(a) requires each Defendant challenging the constitutionality of a federal statute to file notice with the Attorney General of the United States. Each of the above named Defendants has filed proper notice. *See* Dkt. 189, 201, 238.

<sup>4</sup> November 18, 2010 Statement of Non-Opposition to United States' Motion for Certification and Leave to Intervene filed by San Francisco Technology. Dkt. 381.